

EXHIBIT A

Complaint

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Electronically Filed
5/17/2022 12:42 PM
Steven D. Grierson
CLERK OF THE COURT

1 COM
2 ROBERT W. FERNANDES
3 6245 Mighty Flotilla Ave.
Las Vegas, Nevada 89113
Telephone (702) 326-9719
Plaintiff in Proper Person

CASE NO: A-22-852731-C
Department 5

5
6 DISTRICT COURT
CLARK COUNTY NEVADA

7 ROBERT W. FERNANDES, an individual,)
8 Plaintiff,)
9 vs.)
10 FIDELITY INVESTMENTS)
INSTITUTIONAL OPERATIONS CO.)
conducting business in the State of Nevada;)
12 and DOES and ROES I through X,)
inclusive,
13 Defendants,)
14)

CASE NO.:
DEPT. NO.:

COMPLAINT FOR BREACH
OF AGREEMENT

JURY TRIAL REQUESTED

15 COMES NOW Plaintiff, ROBERT W. FERNANDES, in Proper Person, and hereby submits
16 his Complaint for Defendants' Breach of the Agreement pertaining to terms and conditions of
17 Plaintiff's 401K Loan Agreement.

18 I. JURISDICTIONAL ALLEGATIONS

- 19 1. That Defendant, FIDELITY INVESTMENTS INSTITUTIONAL OPERATIONS CO.
20 (hereinafter designated as COMPANY), is a Company doing in business in Clark
21 County, State of Nevada, and at all relevant times, this Defendant did conduct
22 business in Clark County, Nevada
- 23 2. Defendants DOES and ROES I though X are fictitious names of which Plaintiff is
24 ignorant of the true names of the individuals, corporations, co-partnership and
25 association so designated by these fictitious names, and when the true names are
26 discovered, Plaintiff will seek leave of Court to amend this Complaint and
27 proceedings herein, to substitute the true names of said Defendants. Plaintiff believes
28

1 that each of the Defendants designated herein as a DOE and ROE are responsible in
2 some manner for the events herein referred to and negligently, carelessly, recklessly
3 and in a manner that is willful, caused damages proximately thereby to Plaintiff as
4 herein alleged.

- 5 3. That Plaintiff, ROBERT W. FERNANDES, (hereinafter designated as
6 FERNANDES), is an individual and is a resident of Clark County, State of Nevada.
7 4. That the named Defendant, COMPANY, entered into an Agreement with this
8 Plaintiff, FERNANDES, in Clark County, State of Nevada, pertaining to funds
9 borrowed from Plaintiff's employer, Las Vegas Sands Corporation 401K.
10 5. That, as a direct result of Defendant's acts and omissions, Plaintiff sustained damages
11 in an amount in excess of \$62,000.00.
12 6. That this Court has Personal & Subject Matter Jurisdiction to adjudicate the matters
13 stated herein.

14 **II GENERAL ALLEGATIONS**

- 15 7. On or about September 2019, Plaintiff FERNANDES entered into a written
16 Agreement pertaining to funds to be borrowed by Plaintiff from his 401K held by his
17 employer, Las Vegas Sands Corporation.
18 8. As agreed, Plaintiff borrowed two separate amounts from his employee 401k. One
19 loan was taken on or about September 12, 2019 and the other was taken on or about
20 June 2, 2020. Payments were properly and timely paid through automatic deductions
21 from Plaintiff's paychecks. However, due to Plaintiff's inability to continue paying in
22 September of 2020, Plaintiff was considered to have defaulted on September 30,
23 2021. The remaining combined balance of both of the loans at that time was shown
24 to be \$24, 672.53.
25 9. Despite being classified as "in default" which would automatically suspend the
26 deductions from Plaintiff's paychecks, the amounts continued to be deducted from his
27 Account which defied the terms of the Agreement.

10. A review of the Loan details through December 2021, confirms that pursuant to the terms and conditions set forth in the Agreement, *Plaintiff made a good faith effort to repay to loan and most of the outstanding Loan balance was paid in several lump sum amounts.* The total *estimated* remaining taxable balance of the Loan was calculated to be \$24, 672.53. However, an incorrect amount of \$86,095.04 was shown on the 1099-R Form provided to this Plaintiff.
 11. Upon learning that his 1099-R Form failed to properly credit Plaintiff for the lump sum payments he had made, Defendant instead incorrectly showed that he still had a *Taxable Amount of \$86,095.04* instead of showing the actual remaining Taxable balance amount of \$24,672.53
 12. Despite Plaintiff's attempts to have Defendant correct their error, Defendant made no attempts to correct Plaintiff's 1099-R Form.
 13. Plaintiff fully complied with all the terms and conditions as agreed in his Loan Agreement. This included Plaintiff making a good faith effort pay to make "lump sum amounts" toward the balance of the 401K Loan entitling him to be credited for doing so to avoid the incorrect amount being reported to the IRS resulting in an inappropriate excessive tax amount.
 14. As indicated herein, Plaintiff has been damaged due to Defendant's failures by increasing Plaintiff's taxable amount by \$61,423.00.

III. FIRST CAUSE OF ACTION BREACH OF AGREEMENT

15. Plaintiff incorporates and re alleges paragraphs 1 through 14, as though fully set forth at this point.
 16. On or about September 2019, Plaintiff FERNANDES entered into a written Agreement pertaining to funds to be borrowed by Plaintiff from his 401K held by his employer, Las Vegas Sands Corporation.

17. That, pursuant to the reference Agreement, Plaintiff borrowed two separate amounts from his employee 401k. One loan was taken on or about September 12, 2019 and the other was taken on or about June 2, 2020. Payments were properly and timely paid through automatic deductions from Plaintiff's paychecks. However, due to Plaintiff's inability to continue paying in September of 2020, Plaintiff was considered to have defaulted on September 30, 2021. The remaining combined balance of both of the loans at that time was shown to be \$24, 672.53.
 18. Despite being classified as "in default" which would automatically suspend the deductions from Plaintiff's paychecks, the amounts continued to be deducted from his Account which defied the terms of the Agreement.
 19. A review of the Loan details through December 2021, confirms that pursuant to the terms and conditions set forth in the Agreement, *Plaintiff had the right to make a good faith effort to resume repaying the loan, which Plaintiff did.* The total *estimated* remaining taxable balance of the Loan after Plaintiff resumed paying, was calculated to be \$24, 672.53. However, an incorrect taxable amount of \$86,095.04 was shown on the 1099-R Form provided to this Plaintiff.
 20. Defendant incorrectly showed that Plaintiff still had a *Taxable Amount of \$86,095.04* instead of showing the *actual remaining Taxable balance amount of \$24,672.53*, a difference of nearly \$62,000.00.
 1. Despite Plaintiff's attempts to have Defendant correct their error, Defendant made no attempts to do so.
 2. Plaintiff fully complied with all the terms and conditions as agreed in his Loan Agreement. This included making the required good faith effort pay by resuming making payments toward the balance of the 401K Loan. This was agreed to entitle Plaintiff to be credited for doing so to avoid the incorrect taxable amount being reported as shown on the referenced Tax Forms.

1 23. As indicated herein, Plaintiff has been damaged due to Defendant's failures by
2 improperly increasing Plaintiff's actual taxable amount by \$61,423.00.
3

4 WHEREFORE, Plaintiff prays for judgement against Defendants, and each of them, as
5 follows:

6 FOR BREACH OF AGREEMENT

- 7 A. For a sum in excess of \$62,000.00 for General and Special Damages;
8 B. For post judgement interest on award at the legal rate;
9 C. For Fees, Costs and Disbursements made in order to prosecute this suit;
10 D. For any other relief the Court deems appropriate in the premises;

11

12 DATED this 10th day of May, 2022.



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14 ROBERT W. FERNANDES
15 6245 Mighty Flotilla Ave.
16 Las Vegas, Nevada 89113
17 Telephone (702) 326-9719
18 Plaintiff in Proper Person
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1 STATE OF NEVADA)
2 COUNTY OF CLARK)ss.
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VERIFICATION

4 ROBERT W. FERNANDES, under penalty of perjury, being first duly sworn, deposes and
says:

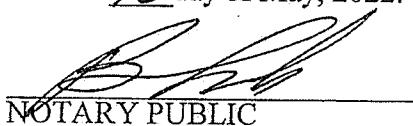
6 That he is the Plaintiff in the above-entitled action; that he has read the foregoing Plaintiff's
7 Amended Complaint for Breach of Agreement and knows the contents thereof; that the same is true
8 of his own personal knowledge, except for those matters therein contained stated upon information
9 and belief, and as to those matters, he believes them to be true.

10 DATED this 10th day of May, 2022.

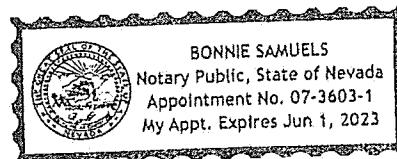


ROBERT W. FERNANDES, Plaintiff

11
12 SUBSCRIBED and SWORN to before
13 me this 10 day of May, 2022.



14 NOTARY PUBLIC



ACKNOWLEDGMENT

17 STATE OF NEVADA)
18 COUNTY OF CLARK)ss.

19 On this 10 day of May, 2022, before me, the undersigned Notary Public in and for said
20 County and State, personally appeared ROBERT W. FERNANDES, known to me to be the person
21 described in and who executed the foregoing Plaintiff's Amended Complaint for Breach of
22 Agreement and who acknowledged to me he did so freely and voluntarily and for the uses and
23 purposes therein mentioned.

24 SUBSCRIBED AND SWORN to before me
25 this 10 day of May, 2022.



26 NOTARY PUBLIC

